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10/519,871

10/31/2005

Hans-Juergen Weidemann

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EXAMINER

KEENAN, JAMES W

ART UNIT

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3652

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/519,871	Applicant(s) WEIDEMANN ET AL.	
	Examiner James Keenan	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-122 is/are pending in the application.
- 4a) Of the above claim(s) 26-43 and 50-122 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 and 44-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 December 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. Applicant's election with traverse of Group I and Species A in the reply filed on 9/02/08 is acknowledged. The traversal is on the ground(s) that the car inventions of Groups I and II contain the substantially the same technical features and that the distinction between species is insufficient. This is not found persuasive because the inventions are distinct in that the Group I claims do not require the particular features of the cars identified in the Group II claims, such as (but not necessarily limited to) a car frame having bogies connected by a central longitudinal member, a car superstructure formed as a trough with a central longitudinal gap at the bottom, or a car comprising a frame and superstructure which only when locked together achieve sufficient rigidity for the loading capacity of the car. Further, the cars set forth in the Group II claims can be loaded or unloaded by means other than the lifting devices or walking beams set forth in the Group I claims, such as (but not limited to) a crane. Further, the separate superstructure of the cars of the Group II claims can be useful for purposes other than the loading and unloading thereof, such as (but not limited to) maintenance or updating. Applicant additionally argues that the "burdensome excess claims fee for these matters" has been previously paid. An excess claims fee is unrelated to whether or not restriction and/or election is proper. It does not entitle applicant to have claims drawn to additional inventions or species examined. It also does not entitle applicant to have more time spent on the application than would be spent on other applications without excess claims. Applicant yet further states that no disparate classification was suggested by the examiner and requests such classification breakdowns. The instant application is a 371 of a PCT application and therefore PCT rules apply, which do not require a classification

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breakdown of the claim groupings, as per US practice. Nevertheless, for applicant's convenience, it is noted that the Group I claims would be classified in class 414 (article and material handling), subclass 339 (loading and unloading of railway cars forming a train), while the Group II claims would be classified in class 105 (railway rolling stock), subclass 355+ (freight cars). Applicant yet further argues that all of the claims were examined in the related PCT application. While this may be true, it does not automatically entitle applicant to examination of all claims in national stage applications. The PCT application was examined by a different RO, and the examiner of the instant application is under no obligation to examine the same number of claims that were examined in the PCT application.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 26-43 and 50-122 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 9/02/08.

3. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Germany on 1/16/03 (103 01 591). It is noted, however, that applicant has not filed a certified copy of the German application as required by 35 U.S.C. 119(b).

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4. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally **limited to a single paragraph on a separate sheet within the range of 50 to 150 words**. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. **The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided**. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

5. The abstract of the disclosure is objected to because it contains legal terms including "means", exceeds 150 words, and is not written as a single paragraph.

Correction is required. See MPEP § 608.01(b).

6. The disclosure is objected to because of the following informalities:

Pages 1-3, claim numbers should not be included in the specification, as it is unlikely that the final claim numbering of any Patent issuing from this application will correspond thereto;

page 36, line 3, the reference to fig. 23 should apparently be to fig. 28.

Appropriate correction is required.

7. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is

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requested in correcting any errors of which applicant may become aware in the specification.

8. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the lever and scissor arrangements (claim 44) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 1-25 and 44-49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-12, while presented as a “method” in the preambles thereof, are not written with proper method terminology, i.e., they do not recite method steps. The desired scope and coverage of these claims can therefore not be determined. Note the format of method claim 13, which is written with proper method terminology.

Claim 13, line 4, “to secured to” is unclear.

Claim 17, lines 15-16, the phrase "in particular" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. Because the limitation following the phrase refers to the method of claims 1-16, it is not clear if this claim is a multiple dependent claim stemming from one of claims 1-16 or if it is an independent claim. The desired scope and coverage of these claims can therefore not be determined

Similar language, (“in particular”, “for example”) in claims 19, 21 and 23 is similarly indefinite.

Claim 48, it is not clear what is meant by “generated centrally”.

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ringer (US 4,522,546) in view of Glassmeyer (US 4,049,135).

Ringer teaches a method of transferring cargo between a train and a road vehicle or between first and second trains, by utilizing lifting devices 54 which are at least temporarily “anchored to the track bed or to secured to (sic) a platform”, as broadly and indefinitely claimed (note gripping jaws 45, col. 7, lines 30-36), comprising moving a first train with at least a first cargo-carrying car into an unloading position (col. 5, lines 9-28), using the lifting devices to lift the cargo off the car (col. 8. lines 10-21), moving the cargo transversely of the longitudinal plane of the car until it is no longer above the car (col. 5, lines 7-30), moving a second train with at least a second car into a loading position (col. 5, lines 1-3), and loading the cargo onto the second car of the second train by reversing the unloading steps (i.e., moving the cargo transversely over the second car and lowering it thereonto by means of the lifting devices).

Ringer does not teach that the car superstructure of the first car is separate from the car frame and is moved with the cargo to a corresponding car frame of the second car.

Glassmeyer shows a method of moving cargo containers from one vehicle to another, wherein one of the vehicles has a separate frame 12 and superstructure 16,

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and where in at least certain circumstances (e.g., fig. 2) the cargo and superstructure are moved as a unit to the other vehicle.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the process of Ringer by utilizing a separate car superstructure movable with the cargo, as Glassmeyer specifically teaches that cargo can be transferred between vehicles with or without a separate vehicle superstructure.

Re claims 14-16, the cargo can clearly be transferred from the first car to the second car either while the trains are situated on adjacent tracks G' and G'', or after the first train has left, and the second train has moved into the position vacated by the first train.

13. Although the prior art does not clearly render claims 1-12, 17-25, and 44-49 unpatentable and has therefore not been applied, this does not necessarily indicate that these claims contain allowable subject matter. Because these claims so seriously fail to meet the requirements of 35 USC 112, 2nd par., as noted above in par. 10, it is not possible to properly apply the art to these claims without disregarding portions of the express wording of the claims and thus resorting to speculation and conjecture as to the particular invention defined therein. See Ex Parte Lyell, 17 USPQ2d, 1548, 1552.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is 571-272-6925. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on 571-272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James Keenan/
Primary Examiner
Art Unit 3652

jwk
12/27/08